

the United States or of corporations chartered under its laws, would have precluded forever the creation of a national currency, issued either by the government or by national banks. Indeed, if the Federal government had not the power to withdraw its creations from discriminating legislation by the States, Chief-Justice Marshall declared, they might tax the mail or the mint, the papers of the custom house, or the forms of judicial process.¹

The question of the existence of the bank in the face of discriminating State taxation was not an academic one in 1818 and the following years, but one which was severely practical. The efforts of the bank to drive the State notes from circulation, and especially its later contraction of discounts when it found itself on the verge of bankruptcy, caused commercial distress and made the bank exceedingly unpopular. North Carolina laid a tax of \$5000 per year on the branch at Fayetteville. Kentucky, Tennessee, Ohio, and Maryland laid taxes on circulation or on the branches as such. The Maryland act required the purchase of stamped paper for the printing of the circulating notes or the annual payment of \$15,000 by the branch at Baltimore. The branch continued to issue notes on unstamped paper and the cashier, William McCulloch, was sued for debt and gave his name to one of the most celebrated of American constitutional cases.² Chief-Justice Marshall, in rendering his decision, admitted that the States possessed unimpaired the power of taxing the people and property of the State and that it might tax the real property of the bank in common with other such property within the State, and might tax the interest of citizens of Maryland in the bank ; but he declared that the Constitution of the United States placed beyond the reach of State power all the powers conferred on the government of the Union and all the means given for the purpose of carrying those powers into execution.³

¹ 4 Wheaton, 316.

² McMaster, IV., 497.

³ Following this decision, all securities of the United States have been held free from taxation by the States unless with the consent of